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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1395

ANDREW HEAD,

Petitioner,

vs.

MARSHALL KORSHAK, Director of Department of Revenue, City of Chicago, Illinois, and JOHN C. MARCIN, City Clerk, City of Chicago, Illinois,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF OF RESPONDENTS IN OPPOSITION

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BRIEF OF RESPONDENTS IN OPPOSITION

Respondents Korshak and Marcin respectfully pray that this Honorable Court deny petitioner's request that a writ of certiorari issue in this case.

QUESTION PRESENTED

Whether a 1974 amendment to the City of Chicago motor vehicle tax ordinance which permitted a 50% fee reduction to persons 65 years of age or older who owned vehicles of less than 55 horsepower is unconstitutional where the exemptions were based upon reasonable classifications and where the amendment is no longer in effect.

STATEMENT OF THE CASE

On December 16, 1974, plaintiff, a 67 year old person who owned a 1967 Cadillac, filed a suit in the Circuit Court of Cook County, Illinois, seeking declaratory and injunctive relief against the November 20, 1974 amendment to the City of Chicago motor vehicle tax ordinance. (Petition, p. 3) That amendment reduced by 50% the annual motor vehicle tax for persons 65 years of age or older, providing that the vehicle registered did not exceed 55 horsepower, or was an ambulance or hearse.

Plaintiff's contention that the amendment denied him equal protection guaranteed under the Illinois and United States Constitutions was rejected by the Circuit Court of Cook County, Illinois which dismissed his complaint. On January 20, 1976, after direct appeal to the Illinois Supreme Court, the Supreme Court affirmed the ruling of the lower court.

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On December 9, 1975, prior to the Supreme Court's ruling, plaintiff filed additional authority with the court notifying it that on November 26, 1975, the City Council of the City of Chicago had amended the motor vehicle tax ordinance and had provided fee reductions for all persons 65 years of age or older regardless of the vehicle registered.

REASONS FOR DENYING THE WRIT

1. This petition presents no issue for this Court to review because the opinion of the Illinois Supreme Court properly follows the decisions of this Court.

2. This petition presents no issue of importance for this Court to decide because the declaratory and injunctive relief sought by plaintiff is unnecessary, in addition to being unwarranted, in light of the November 26, 1975 amendment by the City of Chicago which eliminates the alleged unconstitutional classification.

ARGUMENT

I.

The Amendment To The City Of Chicago Motor Vehicle Tax Ordinance Met The Test Of Reasonableness Which This Court Requires And Thus Is Not A Violation Of The Equal Protection Clause.

Certiorari should be denied in the instant case for the reason that, as the Illinois Supreme Court held below, petitioner has not established that the exemptions in the 1974 Chicago motor vehicle tax ordinance violate the equal protection clause of the United States Constitution. Under the principles set forth by this Court, taxing ordinances or statutes which treat one class of individuals differently than others do not violate the equal protection clause so long as a reasonable basis for the classification exists. *Lehnhausen v. Lake Shore Auto Parts Co.*, 419 U.S. 356, 35 L.Ed. 2d 351, 93 S.Ct. 1001 (1973). Applying this test, the Circuit Court of Cook County, Illinois, and the Illinois Supreme Court found that there was a reasonable basis for the challenged exemption of the Chicago motor vehicle tax ordinance. The Illinois Supreme Court specifically found that:

> [t]he considerations advanced by defendant to support the reasonableness of the exemption are, first, that persons of the age of 65 years and older who are able to afford to operate vehicles with larger horsepower engines are less in need of tax relief than others, and second, that motor vehicles of 55 or more horsepower create greater environmental problems than do lower horsepower vehicles. These can not be said to be unreasonable considerations, and in our opinion they justify the exemption granted by the ordinance." 62 Ill. 2d at 229, 230.

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This finding of reasonableness fully rebuts any constitutional infirmity in the ordinance, and for this reason certiorari should be denied.

Petitioner interprets the decisions of this Court in *Hendrick v. Maryland*, 235 U.S. 610 (1915), and *Bode v. Barrett*, 344 U.S. 583 (1952), as holding that motor vehicle taxes must be based upon a "nexus" between the tax and the relative damage and destruction done to the highways by a particular automobile. Petitioner states that any motor vehicle tax that is not based on this "nexus" is *prima facie* unreasonable. While the taxation schemes upheld by this Court in *Hendrick v. Maryland* and *Bode v. Barrett* did involve taxation based on road use, this Court has never stated that a nexus between road use and amount of the tax is constitutionally required. Indeed such a position was rejected by the Illinois Supreme Court in *Bode v. Barrett*, 412 Ill. 204 (1952) aff'd. 344 U.S. 583, where the court stated:

> "Since the formula used in imposing the tax is not a measure of constitutionality so long as it may be deemed a reasonable exercise of legislative judgment, it is not required that motor vehicle laws necessarily be framed on the basis of mileage taxes, and numerous cases have so held. [Citations omitted.] So long as the tax imposed returns not in excess of a fair and reasonable compensation for the privilege of using the State roads, the tax may be imposed as a flat license fee, as an inspection fee, or may be a tax measured by weight or load capacity, by mileage, by weight and mileage, by value of vehicle, or by fuel purchased or consumed." 412 Ill. at 223, 224.

Other Illinois cases have similarly recognized that numerous other methods of classifying vehicles for taxing purposes are proper and constitutional. The classifications of the Chicago motor vehicle tax were

first upheld in *Harders Storage Co. v. Chicago*, 235 Ill. 58 (1808). In the *Harders* case, the tax was based on the size and number of horses used to pull wagons. In *Melton v. City of Paris*, 333 Ill. 190 (1928) the court upheld a vehicle tax which divided all vehicles into 15 classes of which motor vehicles consisted nine classes. The court in *Melton* did not discuss road use as a basis for any of the classifications.

The petitioner's contentions of a denial of equal protection cannot withstand critical analysis. The Illinois Supreme Court correctly followed the test of reasonableness as stated by this Court in the *Lehnhausen* case. There is no purpose to be served by the issuance of certiorari in this action.

II.

The Injunctive And Declaratory Relief Sought By Plaintiff Is Now Unnecessary In Light Of The Recent Amendment To The Motor Vehicle Tax Ordinance.

Plaintiff requests this Court to declare the 1974 amendment invalid. Plaintiff asks for this relief, even though the amendment is no longer in effect. Moreover, the relief plaintiff requested in the Illinois courts, to enjoin the enforcement of the reduction given to persons 65 years of age or older, would have required all persons to pay full fees and would provide no relief for the elderly citizens of the City of Chicago.

The 1975 amendment to the motor vehicle tax ordinance presently in effect allows a 50% tax reduction to *all* persons 65 years of age or older. Under these circumstances plaintiff is now entitled to a tax reduction

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which he would not have received even if he had prevailed on the merits of his suit. Thus this petition presents no controversy which this Court should be called upon to resolve.

CONCLUSION

For these reasons, therefore, it is respectfully submitted that the Petition For A Writ of Certiorari be denied.

Respectfully submitted,

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